

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Mary E. Lake, M.D.

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Docket No. MPS 113-1102
MPS 35-0402

STIPULATION AND CONSENT ORDER

NOW COME Mary E. Lake, M.D. (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Mary E. Lake, M.D., Respondent, holds Vermont Medical License Number 042-0008821, issued on October 4, 1993.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board), pursuant to 26 V.S.A. §§ 1353, 1354, & 1398 and 3 V.S.A. §§ 809 & 814(c).

I. Background: Prior Board Disciplinary Action.

3. Respondent admitted in a Stipulation and Consent Order in February 1996 in Docket No. MPS 50-0595 that she had developed a pattern of serious alcohol abuse and that such abuse constituted a threat to the health, safety, and welfare of her patients. She admitted to a violation of 26 V.S.A. § 1354(5). Respondent had earlier undergone inpatient evaluation at the Talbott-Marsh Recovery Center and had undertaken a recovery program that included therapy with an addictionologist, other outpatient treatment, and regular attendance at a 12-Step program.

4. Respondent's February 1996 Stipulation and Consent Order with the Board of Medical Practice conditioned her license to practice medicine by requiring her to continue

specific recovery activities, including undergoing random testing screening for alcohol use for at least three years, with the results of such testing being reported directly to the Board.

5. After three years, on September 1, 1999, at Respondent's request, the Board of Medical Practice reviewed the available information regarding Respondent's recovery and approved removal of all conditions on her license to practice medicine.

II. Recent Developments.

A. Docket No. MPS 35-0402.

6. In April 2002 the Board received a complaint, Docket No. MPS 35-0402, alleging that Respondent, while communicating by telephone with an individual regarding a medical matter, allegedly sounded to the complainant as if she was intoxicated during the conversation. Respondent subsequently denied in writing to the Board that she had been under the influence of alcohol or drugs during the conversation. She expressly asserted that she had maintained sobriety and was continuing active participation in AA meetings.

B. Docket No. MPS 113-1102.

7. On November 22, 2002 the Board opened a new complaint, Docket No. MPS 113-1102, against Respondent. The Board opened this complaint based on (a) a written report on October 21, 2002 from the Vermont Practitioner Health Program (VPHP) that Respondent had experienced a relapse from her prior recovery; and (b) a written report to the Board on October 22, 2002 from Respondent herself stating that she had experienced a relapse, had resumed the use of alcohol, and been arrested and charged with driving under the influence of alcohol. Respondent's arrest occurred on or about July 20, 2002.

8. The VPHP program informed the Board by letter that after Respondent's relapse in July 2002 she had entered into a contract with the VPHP program and had "re-establish[ed] sobriety". Respondent's contract with VPHP provided for a program of recovery that included outpatient treatment for alcohol dependency, monitoring, and daily breathalyzer testing. Respondent was described by VPHP as being in "full compliance" with her care contract. Respondent's contract with VPHP was signed on or about August 3, 2002. VPHP subsequently communicated with the Board on November 7, 2002 and stated, "It is our opinion that the VPHP program cannot ensure her sobriety and recovery on an outpatient basis through a monitoring program at this time."

III. Respondent's Involvement with Law Enforcement Authorities.

9. Respondent's relapse involved an arrest on July 20, 2002 and charges of driving while under the influence of alcohol. 23 V.S.A. § 1201(a)(2). At the time of her arrest on July 20 Respondent consented to a roadside Alcosensor test which produced a result of 0.40% blood alcohol content. Operation of a motor vehicle in the State of Vermont with an alcohol concentration of 0.08 or more is unlawful. 23 V.S.A. § 1201(a)(1). Respondent's blood alcohol content was five times greater than the legal threshold for intoxication at the time she was arrested.

10. Respondent subsequently was arraigned on the charge of driving under the influence (DWI #1). Her court-order release conditions included: (a) reporting daily to the Essex Police Department for Alcosensor testing; and (b) a prohibition against purchasing, possessing, or consuming alcohol.

A. August 23, 2002.

11. On August 23, 2002 Respondent took a required Alco sensor test at the Essex Police Department. Her indicated blood alcohol level was alleged to be .029 percent. Respondent denied having consumed alcohol. However, Respondent allegedly had about her a strong odor of intoxicants. Respondent was subsequently charged with violation of her conditions of release.

B. August 31, 2002.

12. On August 31, 2002 Respondent took a required Alcosensor test at the Essex Police Department. On this occasion her blood alcohol level was alleged to be .044 percent. Respondent denied having consumed alcohol. Respondent allegedly had about her a mild odor of intoxicants. Respondent was subsequently charged with violation of her conditions of release.

C. September 25, 2002.

13. On September 25, 2002 Respondent took an Alcosensor test at the Essex Police Department. On this occasion her blood alcohol level was alleged to be .038 percent. Respondent denied having consumed alcohol. Respondent allegedly had about her a mild odor of intoxicants. A second Alco sensor test indicated a blood alcohol level of .040 percent. Respondent was subsequently charged with violation of her conditions of release.

D. Plea of Nolo Contendre.

14. Subsequently, on October 16, 2002, Respondent pled nolo contendere in Chittenden District Court to driving while intoxicated. An adjudication of guilty was entered

by the court. Respondent was sentenced to serve 6 to 12 months, all suspended. She was fined and placed on probation.

E. Respondent's Current Recovery Efforts.

15. The Board has been advised that Respondent since July 2002 has undergone inpatient evaluation and treatment and has received additional outpatient care to assist in her recovery. Respondent presently is continuing inpatient treatment at an out-of-state location.

16. The Board's investigation of this matter is ongoing. Respondent acknowledges that Board investigation is warranted in light of the circumstances involved in her relapse and her subsequent evaluation and treatment. Respondent wishes to cooperate with the Board of Medical Practice and recognizes the Board's obligation to act expeditiously to protect the health, safety, and welfare of patients and the public.

17. No formal charges have been filed against Respondent before the Board. However, for the purposes of this agreement Respondent admits to having relapsed to alcohol use and abuse. Respondent acknowledges that she has determined, knowingly and voluntarily, that she wishes to agree to the terms and conditions set forth below in recognition of her circumstances and of the responsibility of the Vermont Board of Medical Practice to protect the health, safety, and welfare of the public.

IV. Agreement.

18. Respondent acknowledges that she is voluntarily agreeing to this Stipulation and Consent Order. She acknowledges that she has had opportunity to seek advice of counsel in this matter. Respondent agrees and understands that by executing this document she is

waiving such rights as she may possess, at this time, to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, and to a public hearing on a motion by the State for summary suspension of her license to practice medicine. 3 V.S.A. §§ 809 & 814.

19. Although entering no further admission here, and solely for purposes of cooperating with the Board of Medical Practice, Respondent agrees that the Board may enter as its findings and/or conclusions Paragraphs 6 through 17 and an express finding that "public health, safety, or welfare imperatively requires emergency action" and, thus, may enter an order summarily suspending her Vermont license to practice medicine pending further proceedings or order of the Board.

20. Respondent expressly agrees, pending further proceedings or order of the Board of Medical Practice, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; 3 V.S.A. § 814(c) to:

- (a) cooperate fully with further investigation of this matter by the Board of Medical Practice; Respondent agrees sign any and all waivers of confidentiality and/or releases necessary to permit such investigation by the Board and for the Board;
- (b) cease and desist, effective immediately, pursuant to order of the Board, from from any and all practice of medicine, regardless of location, until further order or action of the Board;
- (c) authorize the VPHP Program or similar entity to report to the Board of Medical Practice on her participation in recovery efforts and progress and to immediately report any apparent noncompliance with her program of treatment and care or any indication of possible relapse; Respondent agrees to sign any and all waivers of confidentiality and/or releases necessary to permit such monitoring by the Board and for the Board to make related inquiries; and
- (d) adhere to all terms and conditions set forth above and herein until relieved of such obligation by further order of the Board; in lieu of such further order, Respondent

may demand a prompt hearing on the merits of any allegations or charges that may be presented in this matter, as provided for below.

21. The parties agree that no promises have been made regarding final disposition of this matter. The parties further agree that nothing contained herein shall limit the Board's authority to proceed in this matter, if deemed appropriate at a later date, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; 3 V.S.A. § 814(c); and other relevant authorities.

22. The parties agree that nothing contained herein shall limit Respondent's right to seek at a later date prompt presentation of a formal specification of charges and to demand a prompt hearing on the merits regarding these charges, pursuant to 26 V.S.A. §§ 1354, 1360, 1361 & 1398; 3 V.S.A. § 814(c) and other relevant authorities.

23. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities. The parties agree that an order summarily suspending Respondent's Vermont license to practice medicine may be entered, as described herein, and pending further proceedings or order of the Board. Nothing herein is intended to limit Respondent's right at a later date to demand and receive a formal specification of charges, file motions and pleadings, pursue discovery, to contest all charges against her, to present evidence or witnesses on her behalf, and to require proof as to any allegations against her in a hearing before the Board.

24. This Stipulation and Consent Order is conditioned upon its acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this document, the entire agreement shall be considered void. Respondent agrees to be bound by the terms and

conditions of this Stipulation and Consent Order pending further proceedings or order of the Board of Medical Practice. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce the terms and conditions of this Stipulation and Consent Order until it is modified or she is relieved of its terms and conditions. Respondent agrees that failure by her to abide by any of the terms and conditions of this Stipulation and Consent Order may constitute unprofessional conduct under 26 V.S.A. § 1354(25) and may subject Respondent to such disciplinary action as the Board may deem appropriate, following evidentiary proceedings.

25. The parties therefore jointly agree that should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board of Medical Practice, the Board (a) may enter the findings set forth in Paragraphs 6 through 17, above, including an express finding that express finding that the "public health, safety, or welfare imperatively requires emergency action" and may enter an order summarily suspending Respondent Lake's license to practice medicine, as described herein; and (b) may continue such order until further proceedings or order of the Board.

Dated at Montpelier, Vermont, this 1st day of February 2003.

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: [Signature]
JAMES S. ARISMAN
Assistant Attorney General

Dated at Montpelier this 31 day of January 2003.

[Signature]
MARY E. LAKE, M.D.
Respondent

FOREGOING, AS TO MEDICAL LICENSE OF
MARY E. LAKE, M.D., APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Margaret Funk Martin	David W. Cross
Lynn C. Blowers	PA King
Marion K. Ford	David H. Hays
James D. Hamilton	
Margaret Bolton MD	
Edwin A. Turner MD	

DATED: February 5, 2003

ENTERED AND EFFECTIVE: February 5, 2003

JSA: LAKE STIPULATION; 1/03 (NOT EFFECTIVE UNTIL APPROVED BY BOARD)